

Joseph A. Hirsch, Esq.
Atty. Id. No. 66640
HIRSCH & HIRSCH
110 Bala Avenue
Third Floor
Bala Cynwyd, Pennsylvania 19004
Telephone (610) 660-9955

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAURIE E. SWEIGARD	:	
Plaintiff	:	CIVIL ACTION NO.
	:	02-2755
V.	:	
	:	
CHOICE SERVICES INTERNATIONAL,	:	
INC., ET AL	:	
Defendants	:	

PLAINTIFF'S THIRD MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
AND ANSWERS TO INTERROGATORIES

1. Plaintiff's First Request for Production of Documents and First Interrogatories were served on the Defendants via first class mail on June 20, 2002.
2. On September 6, 2002, Plaintiff filed a Motion to Compel Answers to Interrogatories and Production of Documents.
3. On September 9, 2002, Plaintiff received Defendants' objections and partial responses to her interrogatories and document requests.
4. On September 10, 2002, this Court entered an Order compelling the Defendants to serve full and complete answers

to Plaintiff's interrogatories and to produce all documents responsive to Plaintiff's requests within ten (10) days.

5. The Defendants have failed to fully comply with this Court's Order dated September 10, 2002.
6. The following is a list of the pertinent interrogatories served June 20, 2002, and Defendants' responses thereto:

"8. For each of your employees during the years 1999 and 2000, between the levels of Project Supervisor and Regional Director (inclusive) please list such employee's race, salary/rate of pay, benefits, years of employment with Defendant and any degrees held."

Response:

"See Allen-Yost List attached and please note that all information therein is strictly confidential"

"16. State in complete factual detail the reasons for your termination of the employment of the Plaintiff, and identify each policy or directive allegedly violated by Plaintiff and the manner in which it was violated."

Response:

"See Defendant's response to Plaintiff's Request for Production of Documents"

"17. Identify all of the job qualifications for the positions of Project Supervisor, Program Coordinator and Coordinator of Kinship Services in effect at any time during 2000, and attach any written policies or job descriptions setting forth the same."

Response:

"See Defendant's response to Plaintiff's Request for Production of Documents"

7. Defendants made no objections to Plaintiff's specific

interrogatories, just general objections. A true and correct copy of the Defendants' Answers to Interrogatories is attached hereto as Exhibit A.

8. To date, the Defendants have failed to provide Plaintiff with salary/rate of pay data as of the relevant time frame (spring-fall 2000), as requested in interrogatory 8.
9. To date, Defendants have failed to provide a detailed description of the reasons for terminating Ms. Sweigard's employment as requested in interrogatory 16.
10. To date Defendants have failed to identify all of the job qualifications for the positions of Project Supervisor in effect prior to the revision of the Project Supervisor job description in October 2000, as requested in interrogatory 17.
11. The following is a list of the pertinent document requests served June 20, 2002, and Defendants' responses thereto:
 - "1. All documents requested to be identified in Plaintiff's First Interrogatories."

Response:

"All documents identified in Defendants' Answers to Plaintiff's Interrogatories are attached hereto."
 - "2. All documents identified in Defendant's initial disclosure statement."

Response:

"All documents identified in Defendants' initial disclosures are attached hereto, with the exception of the personnel files of

employees other than Plaintiff. The personnel files contain several thousand pages of documents. Plaintiff is welcomed to review them at the office of Defense counsel. Alternatively, Defendants will have all of the documents copied at Plaintiff's expense (25 cents per page)."

- "3. All documents upon which you will rely in your defense of this matter.

Response:

"See 1-2 above."

- "6. All documents relating to the defendant's investigation of the conduct of Plaintiff and her termination in or about September through October 2000."

Response:

"See Defendants' Answer to Plaintiff's PHRC Complaint and the documents attached thereto, together with the "data and documents" filed by Defendants with the PHRC pursuant to 16 Pa. Code § 42.43."

- "7. All documents or records in the possession or control of Defendant concerning any investigations related to Plaintiff's complaints about discrimination or retaliation.

Response:

"See No. 6 above."

- "9. Job Descriptions and Qualifications. All job descriptions and documents describing job qualifications for employment with Defendant in effect in 1999 and 2000."

Response:

"Objection. Overbroad."

- "10. Policies. All employment policies effective

in 2000 relating to the claims and defenses in this matter, including, without limitation, all policies concerning promotions, hiring, termination of employment, discipline, and posting of new job openings or job vacancies."

Response:

"See No. 6 above."

"11. Any and all documents that relate to the allegations of discrimination and retaliation made by Laurie E. Sweigard against Defendant.

Response:

"See No. 6 above."

12. When they served their responses to Plaintiff's First Request for Production of Documents, the Defendants raised no objections to the pertinent document requests (except as set forth in response to #9 above). A true and correct copy of the Defendants' Answers to Requests for Production of Documents is attached hereto as Exhibit B.
13. Plaintiff contends that the one objection (#9) was untimely and contrary to this Court's Order dated September 10, 2002. In any event, since the qualifications for promotions are a central issue in this case, the request is not overbroad.
14. In the deposition of Vivian Melvin, Defendants' Director of Human Resources, and a member of senior management, it was revealed that although the Defendants had failed to produce any job description for the position of Project Supervisor as requested in interrogatory 17, and claimed to be unable

to locate the same, Ms. Melvin believed she had a copy of the one that was missing from her personnel file. (Exhibit C, Deposition of Melvin, pp. 76-77). To date the Defendants have not produced this document which is reasonably within its control, despite the fact that it is requested in Interrogatory 17 and Document Requests 9 and 10.

15. In the depositions of James Haley and Lauren Leap, both former Regional Directors of Defendants, it was revealed that there exists (at least as of June 2002) a personnel policy manual containing, inter alia, position descriptions. To date this document has not been produced even though this document is requested in Document Requests 9 and 10. (The Depositions of Leap and Haley have not yet been transcribed).
16. In the depositions of Carolyn Eberwein (Defendants' CEO), and Janet Haag (Defendants' Director of Human Resources), it was revealed that the Defendants had failed to search through the their files for, inter alia, supervision meeting notes between certain key witnesses (supervision meeting notes between Melvin and Haley, Haley and Eberwein, Eberwein and Haag, and Eberwein and Sweigard), and notes of Regional Director meetings, attended by the CEO. (Exhibit D, Deposition of Haag, pp. 81-82, 89-90; The deposition of Eberwein has not yet been transcribed). These documents fall within Document Requests 6, 7 and 11.

17. The regional Director meeting notes are potentially of great relevance to Plaintiff's reverse race discrimination claim because at least two of Defendants' former Regional Directors, Cynthia Metraux and Lauren Leap, testified that at one or more Regional Director's meetings, they discussed, inter alia, the company's need to promote and hire more African American employees. (Exhibit F, Deposition of Cynthia Metraux, pp. 41-42) (The testimony of Lauren Leap has not yet been transcribed). To the best recollection of the undersigned, Regional Director Lauren Leap testified that, at least as of the time of her resignation in September 2001, her notes of Regional Director meetings remained in a file in her former office as company property. (The testimony of Lauren Leap has not yet been transcribed).
18. In addition, an issue has arisen concerning the company's requests for waiver of an applicable county requirement that persons who supervise social workers or case workers dealing with children and youths have either masters degrees or approval/waivers from the applicable county agency. The personnel files produced by Defendants were missing waiver request letters for Vickie Melvin, Johnny Allen, Genevie Brown, and the waivers obtained or in effect for Johnny Allen, Genevie Brown, Derrick Rose and Michelle Taylor-Bradley between 1998 and 2000 (or thereafter). Although testimony has suggested that these waivers were obtained at

some point, the applicable documentation has never been produced. These documents are within the purview of Document Requests 9, 10 and 11, and should have been included in Defendants' initial disclosures.

19. Finally, Defendants have taken the position that although at the time of the promotions at issue herein all of Defendants' employees holding the specific title of Project Supervisor were African American, there had been two or three non-African American employees who held this title at some time in the past. (Exhibit C, Deposition of Melvin, p. 82; Exhibit F, Deposition of Jenkins, p. 17; Exhibit D, Deposition of Haag, pp. 87-89). Defendants have contended that there were additional non-African American employees who held substantially equivalent positions. Despite these defenses, the Defendants have neither identified nor produced the relevant personnel files.
20. By letters dated September 15, 2002, September 17, 2002, and October 4, 2002, Plaintiff's counsel specified interrogatories and document requests which had not been adequately answered. (Exhibits G, H and I).
21. On September 20, 2002, Defense counsel faxed a letter to Plaintiff's counsel (dated September 19, 2002) supplementing certain answers and committing to provide certain additional documents and information. (Exhibit J).
22. On October 7, 2002, Defense counsel faxed a letter in

response to Plaintiff's October 4, 2002 letter in which the Defendants committed to voluntarily produce or make available to Plaintiff all of the materials/information requested . . . [in the October 4th letter] -- if they are available and accessible. To date, the above documents and information have not been made available. (Exhibit K).

23. Plaintiff has patiently awaited answers to the interrogatories and production of the documents set forth above.
24. The documents requested and information requested is highly relevant and potentially critical to proving her claim.
25. Plaintiff has filed this motion despite the assurance set forth in Defense counsel's October 7th letter because of the continued delay in Defendants' responses, and this Court's Scheduling Order dated July 9, 2002 setting the deadline for completion of discovery as October 21, 2002.
26. Plaintiff's Motion for an extension of the applicable deadlines remains outstanding.
27. Plaintiff respectfully submits that this Motion was necessitated by the Defendants' failure to comply with her discovery requests in the first instance, and with this Court's September 10, 2002 Order thereafter.
28. Plaintiff's counsel hereby certifies that he has made a good faith effort to resolve this discovery dispute with Defense counsel as required by Fed.R.Civ.P. 37(a)(2)(B) and Local

Rule 26.1(f), however, such efforts have been unsuccessful.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to grant her Motion, Order the Defendants to produce all four of the documents in question, and pay for the counsel fees and costs incurred in preparing this motion and Plaintiff's prior motions to compel.

Date: October 21, 2002

JOSEPH A. HIRSCH, ESQ.
Attorney for Plaintiff

Joseph A. Hirsch, Esq.
Atty. Id. No. 66640
HIRSCH & HIRSCH
110 Bala Avenue
Third Floor
Bala Cynwyd, Pennsylvania 19004
Telephone (610) 660-9955

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAURIE E. SWEIGARD	:	
Plaintiff	:	CIVIL ACTION NO.
	:	02-2755
V.	:	
	:	
CHOICE SERVICES INTERNATIONAL,	:	
INC., ET AL	:	
Defendants	:	

Certificate of Service

I, Joseph A. Hirsch, Esq., hereby certify that on this date, I served a true and correct copy of the Plaintiff's Third Motion to Compel Production of Documents and Answers to Interrogatories, and Plaintiff's Memo of Law in support thereof upon Peter D. Bludman, Esq., counsel for Defendants, at Margolis Edelstein, The Curtis Center, 4th Floor, Independence Square West, Philadelphia, PA 19106-3304, via first class mail, postage prepaid.

Date:

JOSEPH A. HIRSCH, ESQUIRE

Joseph A. Hirsch, Esq.
Atty. Id. No. 66640
HIRSCH & HIRSCH
110 Bala Avenue
Third Floor
Bala Cynwyd, Pennsylvania 19004
Telephone (610) 660-9955

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAURIE E. SWEIGARD	:	
Plaintiff	:	CIVIL ACTION NO.
	:	02-2755
V.	:	
	:	
CHOICE SERVICES INTERNATIONAL,	:	
INC., ET AL	:	
Defendants	:	

O R D E R

AND NOW, this _____ day of _____, 2002,
upon consideration of the Plaintiff's Third Motion to Compel
Production of Documents and Answers to Interrogatories, it is
hereby ORDERED that the Plaintiff's motion is GRANTED.

Within _____ days after the date of this Order, the
Defendants shall fully respond to the following Document Requests
and Interrogatories:

Interrogatories: 8, 16 and 17

Document Requests: 1, 2, 3, 6, 7, 9, 10, and 11

Defendants shall also produce the following documents:

1. Defendants' Personnel/Employment Policy Manual,
including all job descriptions.

2. The job description signed by Vivian Melvin for the position of Project Supervisor.
3. The Supervision meeting notes between Melvin and Haley, Haley and Eberwein, Eberwein and Haag, Leap and Jenkins and Eberwein and Sweigard for all supervision meetings during 1999 and 2000 .
4. All notes of Regional Director meetings occurring during 1999 and 2000.
5. The waiver request letters for Vickie Melvin, Johnny Allen, Genevie Brown, and the letters granting waivers for Johnny Allen, Genevie Brown, Derrick Rose and Michelle Taylor-Bradley between 1998 and the present.
6. The personnel files of all Project Supervisors or employees with substantially equivalent positions.

In the event that any or all of the responsive documents no longer exist, Defendants shall so certify.

It is hereby FURTHER ORDERED that Defendant shall pay to Plaintiff attorneys fees and costs in the amount of \$_____ incurred in preparing and prosecuting this Motion and Plaintiff's

Motions to Compel.

BY THE COURT

, J.

Joseph A. Hirsch, Esq.
Atty. Id. No. 66640
HIRSCH & HIRSCH
110 Bala Avenue
Third Floor
Bala Cynwyd, Pennsylvania 19004
Telephone (610) 660-9955

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAURIE E. SWEIGARD	:	
Plaintiff	:	CIVIL ACTION NO.
	:	02-2755
V.	:	
	:	
CHOICE SERVICES INTERNATIONAL,	:	
INC., ET AL	:	
Defendants	:	

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF
PLAINTIFF'S THIRD MOTION TO COMPEL

I. FACTUAL AND PROCEDURAL HISTORY

The Plaintiff, Laurie E. Sweigard, was formerly employed by Defendants as Quality Assurance Manager.¹

During the course of her employment with Defendants, the Plaintiff became aware of racially discriminatory practices in the hiring, promotion and compensation of Defendants' African American employees. On or about May 18, 2000, Defendants announced the promotion of four (4) African American employees to

¹ Defendant also sometimes referred to this position as Quality Assurance Specialist or Program Analyst.

positions for which they did not possess the objective qualifications. The job openings were not posted internally in accordance with company practices.

Plaintiff attempted to address her concerns over the promotions with management, including, inter alia, Regional Director James Haley, Human Resources Director Janet Haag, and CEO Carolyn Eberwein on a series of occasions between September 26, 2000 and October 13, 2000. As a result, she was repeatedly and severely reprimanded by Eberwein.

On October 4, 2000, when Plaintiff had addressed her concerns directly to Human Resources Director Janet Haag, she was informed that the promotions were based on the "ethnicity" of the employees, and Haag labeled the promotions "affirmative action." Haag further advised Plaintiff that there had been discussions of increasing Ms. Sweigard's job responsibilities and promoting her, but that now this possibility was being called into doubt because of her questioning of the aforesaid promotions.

CEO Carolyn Eberwein had inflicted the harshest reprimands when she learned that Plaintiff had discussed her concerns over the race based promotions with management and contacted the PHRC.

Ultimately, on October 16, 2000, Defendants fired Plaintiff for allegedly discussing personal issues during work hours.

On or about October 20, 2000, Plaintiff filed a complaint with the Pennsylvania Human Relations Commission.

On May 8, 2002, Plaintiff commenced this action alleging

race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 (as amended) (42 U.S.C. § 2000e, et seq.) ("Title VII"), Section 1981 of the Civil Rights Act of 1866 (42 U.S.C. § 1981) ("Section 1981") and the Pennsylvania Human Relations Act ("PHRA").

II. ARGUMENT

This Court's Order dated September 10, 2002 required the Defendants to produce all documents responsive to Plaintiff's requests and fully answer Plaintiff's interrogatories within ten (10) days. Defendants have failed to do so. Accordingly, the Defendants have failed to comply with this Court's Order, and Plaintiff's Third Motion should be granted.

The Defendants have waived any objections by failing to assert them in a timely fashion. Under Rule 33(b)(4) of the Federal Rules of Civil Procedure, a party responding to interrogatories is required to state all grounds for objections with specificity. Fed.R.Civ.P. 33(b)(4). "Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown." *Id.* Rule 34(b) also requires timely and specific responses to Requests for Production of Documents. Failure to timely respond may subject the party to an Order under Rule 37(a).

Thus, Defendant has waived any objections not specifically

and timely raised in its Answers to Interrogatories and Response to Plaintiff's Request for Production.

In the alternative, Defendants' Objection to document request 9 should be overruled as improper. Plaintiff's interrogatories and document requests seek information which is relevant to, inter alia, the merits of Plaintiff's claim of race discrimination and/or are designed to lead to the discovery of admissible evidence concerning the same. The Plaintiff's discovery requests are thus proper under the Federal Rules of Civil Procedure, and Plaintiff's Motion should be granted.

Under Rule 26(b) of the Federal Rules of Civil Procedure, discovery may be obtained "regarding any matter, not privileged, that is relevant to the claim or defense of any party. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1). The United States Supreme Court has held that the rules concerning discovery "are to be accorded a broad and liberal treatment to effect their purpose of adequately informing the litigants in civil trials." Herbert v. Lando, 441 U.S. 153, 177 (1979). Although Rule 26 limits discovery to information that is relevant or reasonably calculated to lead to the discovery of admissible evidence,

"`relevant' has been construed broadly to encompass any matter that bears on, or that reasonably could bear on any issue that is or may be in the case Consistently with the notice-pleading system

established by the Rules, discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during the litigation that are not related to the merits."

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978).

In this case, Plaintiff has alleged that the Defendant promoted employees who lacked the requisite objective qualifications on the basis of race. The Defendant contends that the employees were qualified and that the promotions were not based on race. Thus, the Defendants' employment policies, written (and unwritten) job qualifications, and the personnel files of the other employees in the relevant job classifications (comparators) are relevant to the issues in this case. Accordingly, the Plaintiff's discovery requests are reasonably calculated to lead to the discovery of admissible evidence, and are proper under the federal Rules of Civil Procedure.

III. CONCLUSION.

For the foregoing reasons, Plaintiff's Motion should be granted.

Respectfully submitted,

Date:

JOSEPH A. HIRSCH, ESQUIRE